

December 5, 2002

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
Washington, DC 20554

**Re: Joint Reply Comments filed in
MB Docket No. 02-263, RM-10498;
Amendment of Section 73.202(b),
Table of Allotments, FM Broadcast Stations
(Safford and Eagar, Arizona)**

Dear Ms. Dortch:

Transmitted herewith on behalf of Arizona Radio Partners, LLC, the licensee of KVNA-FM, Flagstaff, Arizona and NPR Phoenix, LLC, the licensee of KEDJ(FM), Gilbert Arizona, are an original and four copies of Joint Reply Comments regarding the Counterproposal filed on behalf of Eagar Broadcasting. This filing is respectfully directed to the Chief, Allocations Branch.

Should any questions arise concerning this matter, please contact this office directly.

Sincerely,


Mark Blacknell
Counsel to Arizona Radio Partners, LLC

cc: John J. McVeigh, Esq.
(Counsel to NPR Phoenix, LLC)

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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In re Amendment of
Section 73.202(b)
of the Commission's Rules,
Table of Allotments,
FM Broadcast Stations

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

MM Docket No. 02-263
RM-10498

(Safford and Eagar, Arizona)

To: The Chief, Allocations Branch, Media Bureau

JOINT REPLY COMMENTS

Arizona Radio Partners, LLC ("ARP"), the licensee of station KVNA-FM, Channel 248C, Flagstaff, Arizona, Facility ID No. 68566, and NPR Phoenix, LLC ("NPR"), the licensee of station KEDJ, Channel 280C2, Gilbert, Arizona, Facility ID No. 54944, by their respective communications counsel, hereby file Joint Reply Comments in response to the Counterproposal filed by Eagar Broadcasting on October 21, 2002 ("*Eagur Counterproposal*") in the above captioned proceeding.

INTRODUCTION

1. **ARP**, as the proponent of a Counterproposal filed on May 20, 2002 in a separate allocation proceeding for Cameron, Arizona, and NPR, as a joint proponent with ARP of a Global Resolution filed June 4, 2002 in the same proceeding, **ask** that the Commission return as unacceptable for consideration the October 21, 2002 *Eagur Counterproposal* as mutually exclusive to both the earlier filed ARP Counterproposal and the joint ARP-NPR Global Resolution.

2. In response to a Notice of Proposed Rule Making, DA 02-737 (released March 29, 2002) ("*Cameron NPRM*") that proposed an allotment of Channel 246A to Cameron, Arizona, ARP and NPR both timely filed counterproposals on May 20, 2002 which were mutually exclusive to both the original Petition filed by McCody Broadcasting and to each other's counterproposal. *See* Exhibit 1 (a copy of the date-stamped receipt-copy cover page of ARP's counterproposal). Subsequent to ARP's and NPR's initial filings in the Cameron proceeding (MM Docket No. 02-73, RM-10400), ARP and NPR filed Joint Reply Comments on June 4, 2002. The Joint Reply Comments advanced a Global Resolution that would serve the public interest and accommodate the interests of the parties to the proceeding.

3. ARP is fairly certain that it understands why Eagar Broadcasting filed a proposal that conflicts with a pending counterproposal. It appears that, despite having been filed *over five months ago*, the Commission has not yet entered the allocation proposals contained in ARP's Counterproposal or ARP and NPR's joint Global Resolution into the Commission's electronic databases. Thus, Eagar Broadcasting, relying on the accuracy of the Commission's electronic databases for information on which to base its study of available channels and sites, was likely not even aware of the timely filed pending proposal to allocate Channel 247C to First Mesa, Arizona'. But, unfortunately for Eagar Broadcasting, and despite the omission of the Channel 247C information from the Commission's databases, ARP's proposed Channel 247C allotment to First Mesa remains a timely filed, cut-off proposal which is fully entitled to protection, and which, due to a short spacing, prevents the consideration of the later filed *Eagar Counterproposal*.

¹ The reference coordinates that ARP employed for Channel 247C¹ at First Mesa were North Latitude 35° 41' 09" and West Longitude 110° 21' 43".

EAGAR COUNTERPROPOSAL IS MUTUALLY EXCLUSIVE WITH ARP'S EARLIER FILED COUNTERPROPOSAL

4. ARP's Counterproposal requested, among other things, that the Commission allot Channel 247C to the community of First Mesa, Arizona as a first local service.' The Counterproposal filed by Eagar Broadcasting proposes the allocation of 246C to Eagar, Arizona at reference coordinates which are short spaced to ARP's proposed 247C¹ by 9.5 kilometers. A channel study is attached as Exhibit 2. The Eagar Counterproposal in the instant docket is thus an untimely Counterproposal to a timely-filed Counterproposal in the Cameron proceeding.. . a "daisy chain" of the type that arose in Kittyhawk Broadcasting Corp., 7 F.C.C. 2d 153, 155 (1967), *appeal dismissed sub nom. Cook, Inc. v. United States*, 394 F.2d 84 (7th Cir. 1968).

5. In a recent case, a similar conflict was created between a previously filed counterproposal and a later filed mutually exclusive proposal because the original counterproposal had not been entered into the database. See Benjamin. Texas, 17 FCC Rcd 10994 (June 14, 2002). In its decision, the Commission has expressly noted that had the "[original counterproposal] been included in the database at [the time of filing of the new proposal], the [new proposal] would have [been] returned as unacceptable for filing." Benjamin, Texas at footnote 1. The same situation exists here and demands the same result. Melody Music, Inc. v. FCC, 345 F.2d 730 (D.C. Cir. 1965).

CONCLUSION

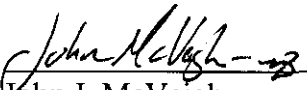
6. For the reasons stated above, the FCC should return the Eagar Counterproposal as unacceptable for consideration. Finally, so that future innocent parties do not fall into the same trap as the Eagar counterproponent has apparently fallen, **ARF** and NPR urge the Commission's

² The reference coordinates that ARP employed for Channel 247C¹ at First Mesa were North Latitude 35° 41' 09" and West Longitude 110° 21' 43".

staff to immediately enter all aspects of their original Counterproposals and of their Joint Reply Comments' Global Resolution of the Cameron proceeding into the FM engineering database

Respectfully submitted,

NPR PHOENIX, LLC

By: 
John J. McVeigh
Its Counsel


John J. McVeigh, Attorney at Law

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December 5, 2002

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EXHIBIT ONE

STAFF REVIEW

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May 20, 2002

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MAY 20 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Marlene Dortch
Secretary
Federal Communications Commission
Washington, DC 20554


**Re: MB Docket No. 02-73; RM-5742; RM-10400;
Counterproposal to Amendment of Section 73.202(b),
Table of Allotments, FM Broadcast Stations (Cameron, Arizona)**

Dear Ms. Dortch:

Transmitted herewith on behalf of Arizona Radio Partners, LCC the assignee of FM Station KVNA-FM, Flagstaff, Arizona, is an original and four copies of a Counterproposal in the above-referenced proceeding. This filing is respectfully directed to the Chief, Allocations Branch.

Should any questions arise concerning this matter, please contact this office directly.

Sincerely,


John F. Garziglia

Enclosure

EXHIBIT TWO

11-15-2002

Arizona Radio Partners, LLC

Channel Study for 247

FM Study for: NEW FCC Database Date: 11/15/2002 35-41-09
Location: FIRST MESA, AZ Channel Class: C 110-21-43

[*] by HAAT indicates calculated as missing in database.

Call	City, State	Chan	Class	Freq	kW	Latitude	Dist.	Required	
Status	Proponent	File Number	HAAT	Longitude	Azm.	Clear (km)			

>>>>>>> Study For Channel 247 97.3 mHz <<<<<<<<									
KVNAFM	FLAGSTAFF, AZ	248 C	97.5	100.	34-58-06	131.1	241		
LIC	Fac. No. 68566	BLH-19860925KA	460	111-30-28	232.9	-109.9	SHORT		
	Use of 73.215 for short spacing requires:						209	-77.9	SHORT
ALLOCR	CAMERON, AZ	246 A	97.1		35-52-30	97.3	165		
ADD		RM-10400		0	111-24-48	282.8	-67.7	SHORT	
ALLOCR	EAGAR, AZ	246 C	97.1		34-01-39	231.5	241		
ADD		Dockt-2002-263		0	108-49-27	142.2	-9.5	SHORT	
ALLOC	TUBA CITY, AZ	250 C1	97.9		36-21-16	106.36	105		
VAC	Fac. No. 71793	-		0	111-12-27	314.5	+1.36	CLOSE	
KRXSFM	GLOBE, AZ	247 C2	97.3	.640	33-17-37	268.9	249		
LIC	Fac. No. 37577	BLH-20020515AAG1039		110-50-09	189.4	+19.9	CLEAR		

CERTIFICATE OF SERVICE

I hereby certify that I have this Fifth day of December, 2002, sent a copy of the foregoing

JOINT REPLY COMMENTS by first class United States mail, postage prepaid, to:

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*denotes hand delivery

Valerie Pines
Valerie Pines

December 5, 2002
Date